

INTERNATIONAL LAW FOR THE MASSES

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I. INTRODUCTION

The number of international courts, tribunals, and commissions has increased dramatically in the past few decades. This increase can be explained in part by the economic globalization resulting from the end of the Cold War and by the emergence of non-state actors as parties with the requisite standing to appear as claimants in international judicial forums. Claims reparations tribunals, in particular, are evidence of this relatively new position of prominence for individuals and corporations. This phenomenon will be explored in more detail by looking at two claims reparations tribunals to see how they operate, what criticisms are advanced against them, and which characteristics are their strongest attributes. Through an examination of the Iran-United States Claims Tribunal (Tribunal or Iran-U.S. Tribunal) and the United Nations Compensation Commission (UNCC or Commission), this Note concludes that the most successful elements of these international dispute settlement bodies are borrowed from the arbitral model and that future forums would benefit from adopting those proven characteristics.

II. THE EXPANSION OF INTERNATIONAL DISPUTE SETTLEMENT

The origins of modern international dispute settlement began with the Permanent Court of Arbitration which was established by the Hague Conventions of 1899 and 1907.¹ Though the Permanent

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1. PHILIPPE SANDS & PIERRE KLEIN, *BOWETT'S LAW OF INTERNATIONAL INSTITUTIONS* 348 (5th ed. 2001).

Court of Arbitration is neither permanent nor a court,² “its establishment marked an important moment as the first standing international adjudicatory body.”³ This judicial body was the first global mechanism for the settlement of international disputes.⁴

Today, more than twenty international courts, tribunals, and commissions exist as permanent institutions and at least seventy other international institutions exercise judicial or quasi-judicial functions.⁵ In the past few decades, the international arena has seen the establishment of trade and investment tribunals, mass claims reparations tribunals, regional economic integration tribunals, human rights tribunals, a law of the sea tribunal, two new United Nations criminal tribunals, and an international criminal court.⁶ This proliferation of international adjudicatory bodies is the result of two interrelated developments: increased economic globalization since the end of the Cold War and the expansion of international law to address issues concerning non-state actors.

The end of the Cold War was a catalyst which launched the world’s transition out of its existing bipolar framework and into the multilateral one that has developed today.⁷ International trade increased between nations and subsequently a need arose for international law forums to govern the inevitable disputes arising from the increased number of global transactions.⁸ Business and trade barriers were lowered among states in order to foster economic efficiency and growth as free trade doctrines and the market-economy paradigm triumphed.⁹ More international judicial bodies were established in the 1990s than in any other decade, due in large part to the systematic

2. The Permanent Court of Arbitration consists of a large panel of arbitrators appointed by state parties to the Hague Convention. Should state parties agree to take a dispute to arbitration, they may choose their arbitrators from this panel. *Id.*

3. *Id.*

4. Roger P. Alford, *The Proliferation of International Courts and Tribunals: International Adjudication in Ascendancy*, 94 AM. SOC’Y INT’L L. PROC. 160, 165 (2000).

5. *About PICT*, PROJECT INT’L CTS. & TRIBUNALS, at <http://www.pict-pcti.org/about/about.html> (last visited Dec. 12, 2004).

6. Alford, *supra* note 4, at 160.

7. Cesare P.R. Romano, *The Proliferation of International Judicial Bodies: The Pieces of the Puzzle*, 31 N.Y.U. J. INT’L L. & POL. 709, 729 (1999).

8. *See id.* at 735 (the building of regional free trade areas brought about the creation of judicial bodies to settle disputes arising out of implementation of agreements, to uphold the regime’s law, to ensure constant interpretation of the agreements, and to guarantee continuous access to legal remedies for members).

9. *Id.*

transformation of international relations following the demise of the Soviet Union.¹⁰

In addition to creating the need for judicial bodies to adjudicate international disputes of the new multilateral world, “the post-Cold War acceleration of the globalization of commerce and telecommunications . . . [decentralized] international law (i.e. [removed] it from an exclusively state platform) and [widened] the community of those affected by international law, needing international law, and developing international law.”¹¹ This introduction of non-state actors into the international legal system was the second driving force behind the increase of international courts, tribunals, and commissions.

Traditionally, international legal personality was only vested in states.¹² “[I]ndividuals and corporate entities were not ‘legal actors’ on the international plane,” so any “grievances [needed to] . . . be espoused by a government for the claim to acquire the requisite standing before an international tribunal.”¹³ With the advent of human rights law though, there has been a renewed focus on the rights of individuals with regard to state conduct.¹⁴ “Modern public international law recognizes that individuals, irrespective of their nationality, have certain basic human rights and that states are responsible for respecting and protecting those rights.”¹⁵ State responsibility now extends to ensure that individuals have an enforcement mechanism against whoever violates their rights, even another state.

This expansion of international law to address the rights of non-state actors, most notably through international trade and human rights law, has called into question the historic doctrine that only states have the international legal personality necessary to appear before international courts.¹⁶ “[P]rivate actors, whether they be victims of human rights abuses . . . or multinational corporations, . . . now have hugely raised expectations as to their rights, and responsibilities, under international law.”¹⁷ These expectations have caused both individuals and corporate entities to put pressure on state and intergov-

10. *Id.* at 729.

11. Lucy Reed, *Great Expectations: Where Does the Proliferation of International Dispute Resolution Tribunals Leave International Law?*, 96 AM. SOC'Y INT'L L. PROC. 219, 221 (2002).

12. Alford, *supra* note 4, at 162.

13. *Id.*

14. Reed, *supra* note 11, at 222.

15. *Id.*

16. Alford, *supra* note 4, at 162.

17. Reed, *supra* note 11, at 220.

ernmental organizations to recognize and to enforce their international rights the same way that their domestic rights are enforced.¹⁸ Today, non-state actors are achieving that recognition and enforcement with the capacity to sue and to be sued before numerous international judicial bodies.¹⁹

One of the most significant consequences of this proliferation of international judicial forums is an increase in the body of international law. “International courts and tribunals regularly render judicial decisions that are creating basic source material for international law.”²⁰ Because more international issues are being decided pursuant to international law, the body of authoritative decisions based on international law is growing.²¹ Furthermore, the decisions of these international courts are relied upon by other international courts.²²

Despite the fact that the current grouping of international courts is not organized in a hierarchy underneath the ICJ,²³ “the variety of international tribunals functioning today do not appear to pose a threat to the coherence of an international legal system.”²⁴ In fact, the courts and tribunals involved in international dispute settlement are not only cooperating with each other, but are displaying characteristics of a network.²⁵ “As a whole, the other forums complement the work of the ICJ and strengthen the system of international law, notwithstanding the risk of some loss of uniformity.”²⁶

These new international courts, tribunals, and commissions, operating individually, are working in concert to further the role of international law in the world today. Their decisions are expanding the body of international law, and they are enforcing the rights of non-state actors in the international arena. Therefore, it becomes extremely important to understand how these judicial bodies operate, who the judicial decision makers are, and where their strengths and

18. *Id.* at 221.

19. *See id.* (private and public actors are achieving recognition, enforcement and expansion of international rights in the proliferation of international judicial bodies); Alford, *supra* note 4, at 162 (individuals and corporate entities have standing in international courts and tribunals).

20. Alford, *supra* note 4, at 160.

21. Jonathan I. Charney, *The Impact on the International Legal System of the Growth of International Courts and Tribunals*, 31 N.Y.U. J. INT'L L. & POL. 697, 704 (1999).

22. Alford, *supra* note 4, at 161.

23. Charney, *supra* note 21, at 698.

24. *Id.* at 700.

25. Anne Peters, *International Dispute Settlement: A Network of Cooperational Duties*, 14 EUR. J. INT'L L. 1, 1–2 (2003).

26. Charney, *supra* note 21, at 704.

weaknesses lie. Ultimately, it will be up to the international community to learn from those weaknesses and transform them into lessons for the future of judicial dispute resolution in international law.

III. CLAIMS REPARATIONS TRIBUNALS: COMPENSATING INDIVIDUALS

Of the myriad of new courts, tribunals, and commissions that have emerged recently, claims reparations tribunals illustrate the growing importance of individuals and other non-state actors in international law. The notion of one country paying reparations to another is not new,²⁷ but it is significant that a country would choose to pay reparations through a claims tribunal instead of a one-time lump sum payment. Lump sum payments are paid from one government to the other and individual claims are not considered until much later in the process,²⁸ while international claims tribunals afford recognition directly to individual claimants.²⁹ This recognition is an acknowledgment that non-state actors have been injured in an international conflict and that they are entitled to compensation. This does not mean, of course, that individuals, corporations, and international organizations did not go unharmed in international conflicts previous to the expansion of international law to include non-state actors, but it is only after this expansion that their claims are afforded the right to be adjudicated before an international judicial body.³⁰

27. See Howard M. Holtzmann, *Mass Claims Processes*, 13 AM. REV. INT'L ARB. 69, 74 (2002) (mass claims processes have been a useful way to provide compensation).

28. Even if the money is distributed through a domestic claims commission, "prospective claimants rarely [receive] the adjudicated value of their claims, much less the amount they initially sought." David J. Bederman, *The Glorious Past and Uncertain Future of International Claims Tribunals*, in INTERNATIONAL COURTS FOR THE TWENTY-FIRST CENTURY 161, 169 (Mark W. Janis ed., 1992).

29. In the Iran-U.S. Claims Tribunal, for example, individual claimants may present their claims to the Tribunal directly in accordance with Article III(3) of the Claims Settlement Declaration: "Claims of nationals of the United States and Iran that are within the scope of this Agreement shall be presented to the Tribunal either by claimants themselves or, in the case of claims of less than \$250,000, by the government of such national." Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran (Claims Settlement Declaration), Jan. 19, 1981, U.S.-Iran, art. III(3), available at <http://www.iusct.org/claims-settlement.pdf> [hereinafter Claims Settlement Declaration]. For more information about the United Nations Compensation Commission's focus on individual claimants, see *infra*, Part III(B).

30. For example, the United Nations Compensation Commission, established in 1991, was in the unique position, as compared to the claims tribunals following the Napoleonic Wars or either of the two World Wars, to be able to award claims on behalf of non-state actors.

In this brief examination of claims tribunals and their place within the proliferation of international judicial bodies, this Note highlights the Iran-U.S. Claims Tribunal and the United Nations Compensation Commission. While these two international claims tribunals are quite different in their origin, their structure, and their operation, they both borrow extensively from the arbitral model and it is these characteristics that have proven to be their most successful and effective attributes.

A. Iran-United States Claims Tribunal

The Iran-U.S. Claims Tribunal was established in 1981 as one of the measures taken to resolve the crisis between the Islamic Republic of Iran and the United States of America.³¹ The diplomatic crisis, which began on November 4, 1979 when fifty-two United States nationals were detained at the U.S. Embassy in Tehran, was furthered when the United States subsequently froze all Iranian assets in the United States and in the hands of persons subject to U.S. jurisdiction.³² The hostage crisis led to an almost complete severance of commercial relationships, and many U.S. nationals had contracts that were cancelled and property which was expropriated.³³ Claimants moved quickly and by 1980, more than 400 actions had been filed in U.S. courts against Iran.³⁴ Perhaps Iran's greatest incentive to resolve the crisis to the satisfaction of both countries was that it faced the

Indeed, when the UN Security Council decided in the aftermath of the 1990-91 Kuwait crisis to establish a mechanism to deal with the issue of reparations for war damages . . . it did not built upon a clean slate. A long tradition of international claims practice offered sound foundations for this process. Yet the context was deeply different and unprecedented: the Cold War had just terminated, giving the UN a unique opportunity for innovation. Unlike in 1815, 1918, or 1945 when non-state actors still played a marginal role in international society, in 1991 individuals (and even stateless persons), non-governmental organizations, corporations and intergovernmental organizations could, for the first time in history, become beneficiaries of the process along sovereign states.

Cesare P.R. Romano, *Woe to the Vanquished? A Comparison of the Reparations Process after World War I (1914-18) and the Gulf War (1990-91)*, 2 *AUS. REV. INT'L & EUR. L.* 361, 362 (1997).

31. *Background Information: Iran-United States Claims Tribunal*, IRAN-US CLAIMS TRIBUNAL, at <http://www.iusct.org/background-english.html> (last visited Dec. 12, 2004).

32. Charles N. Brower, *The Lessons of the Iran-U.S. Claims Tribunal Applied to Claims Against Iraq*, in *THE UNITED NATIONS COMPENSATION COMMISSION* 15, 15 (Richard B. Lillich ed., 1995).

33. WAYNE MAPP, *THE IRAN-UNITED STATES CLAIMS TRIBUNAL, THE FIRST TEN YEARS 1981-1991: AN ASSESSMENT OF THE TRIBUNAL'S JURISPRUDENCE AND ITS CONTRIBUTION TO INTERNATIONAL ARBITRATION* 7 (1993).

34. *Id.*

prospect of its frozen assets being used to satisfy the U.S. claims.³⁵ Finally, in January 1981, with Algeria acting as an intermediary between the two nations, each country's respective commitment to end the crisis through a process of binding arbitration was recorded in the General Declaration³⁶ and the Claims Settlement Declaration.³⁷

Arbitration has long been a favorite mechanism to settle disputes, but traditionally, long before the widespread use of arbitration to settle private commercial disputes, this form of dispute resolution was reserved only for state parties.³⁸ Though Iran and the United States would clearly have claims against each other, both countries understood that individuals and other non-state actors had been injured and needed to be compensated as well. In light of this, the Tribunal has jurisdiction over three types of cases. First, it can hear

35. *Id.*

36.

It is the purpose of both parties, within the framework of and pursuant to the provisions of the two Declarations of the Government of the Democratic and Popular Republic of Algeria, to terminate all litigation as between the government of each party and the nationals of the other, and to bring about the settlement and termination of all such claims through binding arbitration. Through the procedures provided in the Declarations relating to the Claims Settlement Agreement, the United States agrees to terminate all legal proceedings in United States courts involving claims of United States persons and institutions against Iran and its state enterprises, to nullify all attachments and judgments obtained therein, to prohibit all further litigation based on such claims and to bring about the termination of such claims through binding arbitration.

Declaration of the Government of the Democratic and Popular Republic of Algeria (General Declaration), Jan. 19, 1981, U.S.-Iran, General Principle B, *available at* <http://www.iusct.org/general-declaration.pdf>.

37. *Background Information: Iran-United States Claims Tribunal*, *supra* note 31.

An international arbitral tribunal (the Iran-United States Claims Tribunal) is hereby established for the purpose of deciding claims of nationals of the United States against Iran and claims of nationals of Iran against the United States, and any counterclaim which arises out of the same contract, transaction or occurrence that constitutes the subject matter of that national's claim, if such claims and counterclaims are outstanding on the date of this Agreement, whether or not filed with any court, and arise out of debts, contracts (including transactions which are the subject of letters of credit or bank guarantees), expropriations or other measures affecting property rights, excluding claims described in Paragraph 11 of the Declaration of the Government of Algeria of January 19, 1981, and claims arising out of the actions of the United States in response to the conduct described in such paragraph, and excluding claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts, in response to the Majlis position.

Claims Settlement Declaration, *supra* note 29, at art. II(1).

38. See J.G. MERRILLS, *INTERNATIONAL DISPUTE SETTLEMENT* 112 (3d ed. 1998) ("The distinction between inter-state and private arbitration is clear enough when we compare the traditional procedure for resolving disputes between states on the one hand, with the newer way of using arbitration to settle disputes between private individuals or corporations on the other.").

claims of United States nationals against Iran and claims of Iranian nationals against the United States.³⁹ Second, it can hear official claims of the two nations against each other.⁴⁰ Lastly, it can hear interpretive disputes relating to the application of the General Declaration and the Claims Settlement Declaration.⁴¹ The United States and Iran thus adopted an arbitral process known as “mixed arbitration,” which is used to resolve disputes between states and private parties.⁴² This process, as opposed to traditional inter-state arbitration, would ensure that all claims could be heard and adjudicated by the Tribunal.

The Iran-U.S. Tribunal evidences a growing trend in international law that procedures, and even entire institutions, can be tailored specifically to each ad hoc situation. “The development of procedures for resolving disputes between states and private bodies highlights the way in which supply can be adapted to meet demand in the field of dispute settlement.”⁴³ The Tribunal is an acknowledgment of both this procedural flexibility and the need to provide forums for dispute resolution involving non-state actors.

Some aspects of the Iran-U.S. Tribunal are characteristic of judicial settlement,⁴⁴ but the specificity of the Tribunal places it within an arbitral framework. “Judicial settlement involves the reference of a dispute to the International Court or some other standing tribunal, such as the European Court of Human Rights. Arbitration, in contrast, requires the parties themselves to set up the machinery to handle a dispute, or series of disputes, between them.”⁴⁵ Because the Iran-U.S. Tribunal was set up by the parties solely for the purpose of resolving claims arising from their dispute, the Tribunal falls within the arbitral model. The Tribunal’s similarities to arbitration appear most strongly by examining the role of the Tribunal’s judicial decision makers, the judges.

39. Claims Settlement Declaration, *supra* note 29, at art. II(1).

40. *Id.* at art. II(2).

41. *Id.* at art. II(3).

42. Peters, *supra* note 25, at 7–8.

43. MERRILLS, *supra* note 38, at 114.

44. “[T]he Tribunal has ‘judges’, indeed, it has a stable cadre of these judges, it sits in one place, the Hague, it publishes its decisions, as any proper court should do, and no doubt over the years it has developed a set of procedures, modes of proof and terms of substantive jurisprudence well known to the bar that practices before it.” Richard W. Hulbert, *The International Commercial Arbitration Model and Public International Law Disputes*, 8 ILSA J. INT’L & COMP. L. 501, 501–02 (2002).

45. MERRILLS, *supra* note 38, at 88.

The Tribunal consisted of nine judges at a time.⁴⁶ Iran and the United States each appointed three of the judges and the remaining third were appointed by those six government appointed judges.⁴⁷ Panels are composed by the President and consist of three judges: one Iranian judge, one U.S. judge, and one third-country judge.⁴⁸ These third-country judges have come from Poland, Italy, Finland, France, Sweden, the Netherlands, Germany, Switzerland, and Argentina.⁴⁹ The cases are distributed to the panels by lot, but the full Tribunal decides all disputes between the two governments and other important cases as determined by the President.⁵⁰ The Tribunal Rules of Procedure, based on the UNCITRAL Arbitration Rules, include a mandatory disclosure for all judges of any circumstances likely to give rise to doubts about his or her impartiality or independence, as well as procedures by which parties can challenge the independence or impartiality of any judge.⁵¹

These rules illustrate the government parties' involvement in the Tribunal, similar to how the parties in an arbitration are deeply involved in the process of selecting arbitrators. In fact, it is this characteristic of arbitration that some view as the most important. "[T]he right of the parties to choose their own judges has always been, and remains to this day, the distinguishing feature of international arbitration."⁵² The binding award from arbitration has more legitimacy, and is more likely to be accepted by the state parties, if they appointed the decision makers. "[I]f governments are to be persuaded to refer disputes to third parties they must have confidence in those who are to give the decision."⁵³

Furthermore, the procedural aspects of the Tribunal also parallel arbitration. First, the Tribunal's Rules of Procedures are based on the UNCITRAL Arbitration Rules, which allow for a considerable

46. Claims Settlement Declaration, *supra* note 29, at art. III(1).

47. *Id.*

48. *Id.*

49. Email from Erlien Reinders, Administrative Officer, Iran-United States Claims Tribunal, to Jessica Bodack, Student, Duke University School of Law (Nov. 11, 2004, 07:35 EST) [hereinafter Iran-United States Claims Tribunal Members] (on file with author).

50. Claims Settlement Declaration, *supra* note 29, at art. III(1); Background Information: Iran-United States Claims Tribunal, *supra* note 31.

51. Iran-United States Claims Tribunal Rules of Procedure, May 3, 1983, arts. 9–12, *available at* <http://www.iusct.org/tribunal-rules.pdf>.

52. D.H.N. Johnson, *The Constitution of an Arbitral Tribunal*, 30 BRIT. Y.B. INT'L L. 152, 165 (1953).

53. MERRILLS, *supra* note 38, at 116.

amount of flexibility based on the Tribunal's actual operations.⁵⁴ Additionally, the Tribunal has quite a bit of latitude in determining the applicable law.⁵⁵ This latitude is also a common characteristic of arbitration where "[i]f the parties wish to increase the arbitrator's freedom . . . , they can authorize him to take into account what is fair and reasonable, as well as the rules of international or municipal law."⁵⁶ The flexibility of the arbitral procedure allowed the parties and the Tribunal to create the most effective forum possible.

Another important object of comparison between the Tribunal and the arbitral process is the issue of the finality of the award. "An arbitral award is binding, but not necessarily final. For it may be open to the parties to take further proceedings to interpret, revise, rectify, appeal from or nullify the decision."⁵⁷ The Tribunal's decisions, however, are final and binding.⁵⁸ This lack of any appeal mechanism could be criticized as creating a power imbalance since the judges' decisions immediately become final and binding international law.

Of course, the Tribunal is subject to other criticisms as well. Despite the advantages of keeping parties involved in the process of setting up and overseeing the judicial body which will adjudicate their disputes, some have argued that Iran and the United States were too involved and had too much power to influence the Tribunal's actions.⁵⁹ Although this power legitimized the Tribunal's actions to

54. "Members of the Tribunal shall be appointed and the Tribunal shall conduct its business in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) except to the extent modified by the Parties or by the Tribunal to ensure that this Agreement can be carried out." Claims Settlement Declaration, *supra* note 29, at art III(2).

55. *See id.* at art. V ("The Tribunal shall decide all cases on the basis of respect for law, applying such choice of law rules and principles of commercial and international law as the Tribunal determines to be applicable, taking into account relevant usages of the trade, contract provisions and changed circumstances."). *See also* Bederman, *supra* note 28, at 176 ("The Iran-U.S. Claims Tribunal has interpreted [Article 5 of the Claims Settlement Declaration] to give it extraordinary latitude in choosing among different sources of law, including that specified in an applicable contract, a municipal legal system selected by choice of law rules, the general principles of international commercial usage (the *lex mercatoria*), or principles of public international law.").

56. MERRILLS, *supra* note 38, at 101.

57. *Id.* at 105.

58. Claims Settlement Declaration, *supra* note 29, at art. IV(1).

59.

Unlike some other tribunals, the Iran-U.S. Claims Tribunal was not imposed by a victor on a vanquished. Thus, one government could not dictate the procedures or schedule. Because of the relatively equal bargaining position between Iran and the United States, the establishment of the Tribunal, selection of third country arbitrators

some degree,⁶⁰ the parties were able to abuse that power, most notably to cause delays in the Tribunal's operations. For example, Iran frequently forced its arbitrators to resign, a common tactic used by parties in an arbitration to delay proceedings.⁶¹

Delays were also an indirect result of the way the Tribunal was set up and the fact that the judicial decision-making body was a small community of only nine judges at a time. When the same people work closely together on a daily basis in a restricted environment, the "small town syndrome" can occur.⁶² "[T]he more people are thrown together on a constant basis, the more they must take each other's conduct into account, and the more susceptible they are to trade-offs."⁶³ As time went on, there was a natural tendency on the part of third-country judges to compromise more and to find ways to "say yes" to Iran.⁶⁴ Though this tendency usually happens at first in seemingly harmless procedural decisions, pressures eventually increase to grant tradeoffs in substantive matters.⁶⁵ "This is at least part of the explanation, for example, for the endless extensions of time granted to Iranian parties to complete their pleadings or respond to the pleadings of others."⁶⁶ The Tribunal's small community created an environment where personal relationships evolved to the point of possibly impeding the judges' impartiality.

Overall though, the Tribunal must be characterized as a success. First, the Tribunal accomplished exactly what it was supposed to do: it was a mechanism for the pacific settlement of disputes.⁶⁷ Not only was the diplomatic crisis of 1979-1981 diffused, but future international relations between the United States and Iran were salvaged. "One wonders whether the United States would be able to make dip-

and promulgation of rules and procedures could be expected to be somewhat time-consuming and not necessarily efficient. Indeed, as relations between the United States and Iranian governments remained frigid, it would not be easy for them to come to agreement. Moreover, as is customary with defendants in any proceeding, Iran had little incentive to acquiesce in procedures that would expedite claims—at least the private claims (those brought by nationals of the State)—most of which were against it.

Richard M. Mosk, *The Pace of the Proceedings*, in *THE IRAN-UNITED STATES CLAIMS TRIBUNAL AND THE PROCESS OF INTERNATIONAL CLAIMS RESOLUTION* 201, 202-03 (David D. Caron & John R. Crook eds., 2000).

60. See *supra* note 53 and accompanying text.

61. Peters, *supra* note 25, at 24.

62. Brower, *supra* note 32, at 18.

63. *Id.*

64. *Id.* at 19.

65. *Id.*

66. *Id.*

67. Alford, *supra* note 4, at 164.

lomatic overtures to Iran today if U.S. nationals had never seen a measure of economic justice.”⁶⁸ Additionally, in terms of pure numbers, the Tribunal successfully settled over 3,000 cases and over \$2 billion was paid to claimants.⁶⁹ Lastly, “[t]he Tribunal has been a grand success and in no small part because of the quality of the judges who have served it.”⁷⁰ Thirty individuals have served as judges since 1981,⁷¹ and each of them contributed elements of professionalism and integrity to the Tribunal’s success.

The Iran-U.S. Tribunal is a unique institution, both in its mandate and its structure. The Tribunal’s very establishment points to the elevated status of non-state actors in the international arena, and the involvement of the two state parties in its creation and operation legitimized the Tribunal’s decisions. Furthermore, the adjudicatory process used by the Tribunal reflects the flexibility and adaptability of the arbitral model in resolving complex disputes in international law.

B. United Nations Compensation Commission

The United Nations Compensation Commission was established by the U.N. Security Council in 1991 following Iraq’s invasion and occupation of Kuwait.⁷² The UNCC’s charter to process claims and pay compensation for losses resulting from the first Gulf War was set out in paragraphs 16 and 18 of U.N. Security Council Resolution 687:

16. [The Security Council] . . . [r]eaffirms that Iraq . . . is liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq’s unlawful invasion and occupation of Kuwait;⁷³

18. [The Security Council] . . . [d]ecides also to create a fund to pay compensation for claims that fall within paragraph 16 above and to establish a Commission that will administer the fund;⁷⁴

It should be noted that in paragraph 16, the Security Council asserts Iraq’s responsibility to individuals and corporations as well as to

68. *Id.*

69. Gilbert Guillaume, *The Future of International Judicial Institutions*, 44 INT’L & COMP. L.Q. 848, 859 (1995).

70. Hulbert, *supra* note 44, at 501.

71. Iran-United States Claims Tribunal Members, *supra* note 49.

72. *Introduction*, UN COMPENSATION COMMISSION, at <http://www2.unog.ch/uncc/introduc.htm> (last visited Dec. 12, 2004).

73. S.C. Res. 687, U.N. SCOR, 2981st meeting, at para. 16, U.N. Doc. S/RES/687 (1991), available at <http://www2.unog.ch/uncc/resolutio/res0687.pdf>.

74. *Id.* at para 18.

governments. The UNCC's commitment to non-state actors and its focus on the individual was then confirmed in the Commission's very first decision which gave precedence, not to the claims of corporations and governments, but rather to the processing of claims by individuals not exceeding \$100,000.⁷⁵ Furthermore, individual claimants at the UNCC have an elevated level of autonomy and responsibility because they select the type of claim they desire to file themselves, instead of the more common approach of the claims facility deciding on the category of each claim.⁷⁶ In fact, one author has called the privileged position of the individual claimant in the UNCC system "as possibly the most significant contribution of the UNCC to the development of international law in the field of claims settlement."⁷⁷

Despite the strong focus on individuals, the UNCC does not fit the classic reparations mold exactly. "Under the traditional reparations model . . . there is a fixed amount of money in a closed-end fund that is administered and allocated by a single nationality. Here the fund is open-ended and administered and allocated by an international organization."⁷⁸ Also, as will be discussed below, although there are numerous similarities between the UNCC and the arbitral model, the UNCC is not a classic arbitration either. "With traditional arbitration . . . the amount of monies available is typically not restricted and the affected parties participate in the allocation decision-making, albeit with international arbitrators. The UNCC, however, does not contemplate an adversarial process to determine the total amount of monies to be awarded."⁷⁹ Neither a pure claims reparation tribunal nor a pure arbitration, the structure of the UNCC is rather unique.

With Resolution 692 of May 20, 1991, the U.N. Security Council approved the UNCC in accordance with the configuration set out in the U.N. Secretary-General's report of May 2, 1991.⁸⁰ In this report, the Secretary-General specified that

75. Andrea Gattini, *The UN Compensation Commission: Old Rules, New Procedures on War Reparations*, 13 EUR. J. INT'L L. 161, 166 (2002).

76. Francis E. McGovern, *The Intellectual Heritage of Claims Processing at the United Nations Compensation Commission*, in *THE UNITED NATIONS COMPENSATION COMMISSION* 187, 195–96 (Richard B. Lillich ed., 1995).

77. Gattini, *supra* note 75, at 170.

78. McGovern, *supra* note 76, at 195.

79. *Id.*

80. "3. [The Security Council] . . . [d]ecides to establish the Fund and Commission referred to in paragraph 18 of resolution 687 (1991) in accordance with Part I of the Secretary-General's report, and that the Governing Council will be located at the Offices of the United Nations at

[t]he principal organ of the Commission will be a 15-member Governing Council composed of the representatives of the current members of the Security Council at any given time. The Governing Council will be assisted by a number of commissioners who will perform the tasks assigned to them by the Governing Council.⁸¹

As a result, the Commission is a bifurcated organ: the Governing Council stands as the policy-making arm and the commissioners are the judicial decision-makers.⁸² In this report however, the Secretary-General made it clear that that the Commission was not a judicial body in the same manner as the Iran-U.S. Tribunal.

The Commission is not a court or an arbitral tribunal before which the parties appear; it is a political organ that performs an essentially fact-finding function of examining claims, verifying their validity, evaluating losses, assessing payments and resolving disputed claims. It is only in this last respect that a quasi-judicial function may be involved.⁸³

Despite this, many similarities exist between the UNCC's commissioners, the Iran-U.S. Tribunal's judges and arbitrators in a traditional arbitration proceeding.

Structurally, the UNCC mirrors the familiar construction of the Iran-U.S. Tribunal. As in the Tribunal, the UNCC's commissioners work in panels of three, and each of the members must be of a different nationality.⁸⁴ The composition of each panel is determined by the Governing Council who assigns each panel a specific category or sub-category of claims.⁸⁵

The commissioners here are not appointed by government parties though. Instead, they are nominated by the Secretary-General and placed on a Register of Experts.⁸⁶ Once approved, the commis-

Geneva and that the Governing Council may decide whether some of the activities of the Commission should be carried out elsewhere." S.C. Res. 692, U.N. SCOR, 2987th mtg., at para 3, U.N. Doc. S/RES/692 (1991), available at <http://www2.unog.ch/uncc/resolutio/res0692.pdf>.

81. *Report of the Secretary-General Pursuant to Paragraph 19 of Security Council Resolution 687 (1991)*, U.N. SCOR, Report 22559, at 3, U.N. Doc. S/22559 (May 2, 1991), available at <http://www2.unog.ch/uncc/resolutio/res22559.pdf> [hereinafter Report 22559].

82. *Id.* at 7.

83. *Id.*

84. *Provisional Rules for Claims Procedure*, U.N. Compensation Commission, 6th Sess., at art. 28, U.N. Doc S/AC.26/1992/10 (June 26, 1992), available at http://www2.unog.ch/uncc/decision/dec_10.pdf [hereinafter Provisional Rules].

85. *The Commissioners*, U.N. COMPENSATION COMMISSION, at <http://www2.unog.ch/uncc/commiss.htm> (last visited Dec. 12, 2004).

86. Provisional Rules, *supra* note 84, at art. 18(2).

sioners are then appointed from this Register by the Governing Council as needed to form panels to review claims.⁸⁷

From the beginning, the duties assigned to the commissioners made it clear that they were expected to fill the role of judicial decision-makers. The Secretary-General's report of May 1991 specified that, given the bifurcated nature of the Commission, "it is all the more important that some element of due process be built into the procedure. It will be the function of the commissioners to provide this element."⁸⁸ The commissioners were to ensure that certain levels of judicial norms like fairness and justice persisted in the processing of claims at the UNCC.

Additionally, the procedures followed by the commissioners are similar to those of arbitrators. The commissioners meet in panels to deliberate once they've examined claims.⁸⁹ The panel must determine the "admissibility, relevance, materiality and weight of any evidence submitted."⁹⁰ A panel may also request further written submissions, invite testimony through oral proceedings, or call for additional information from any other source, including expert advice.⁹¹ A majority of the commissioners must concur in any recommendations or decisions.⁹²

The actual processing of claims is done in various stages. First, the commissioners verify and evaluate the losses claimed.⁹³ In doing this, the commissioners must determine whether the claims are directly related to the Iraqi invasion of Kuwait.⁹⁴ The resolution of any disputed claims is arguably the commissioners' most judicial function.⁹⁵ Once the commissioners assess the value of losses suffered by the claimants, they make recommendations for compensation, with brief explanations, in written reports submitted to the Governing Council.⁹⁶

87. *Id.* at art. 18(1).

88. Report 22559, *supra* note 81, at 7.

89. Provisional Rules, *supra* note 84, at art. 33(1).

90. *Id.* at art. 35(1).

91. *Id.* at art. 36.

92. *Id.* at art. 33(3).

93. Report 22559, *supra* note 81, at 8–9.

94. *The Commissioners*, *supra* note 85.

95. Report 22559, *supra* note 81, at 8–9.

96. *Claims Processing*, U.N. COMPENSATION COMMISSION, at <http://www2.unog.ch/uncc/clmsproc.htm> (last visited Dec. 12, 2004).

Interestingly though, the Governing Council still has quite a bit of influence over the process. The guidelines used by the commissioners in verifying and resolving claims were established by the Governing Council at the outset.⁹⁷ Also, once the commissioners have made their recommendations, it is the Governing Council who makes the final determination on the compensation awarded.⁹⁸ Despite this ultimate position of review, the Governing Council has approved all of the panels' recommendations submitted to it to date.⁹⁹ So it is the commissioners' influence which pervades the UNCC's legacy and it is these individuals, similar to the Iran-U.S. Tribunal's judges, who have been crafting the UNCC's contribution to international law.

As individuals, both arbitrators and the UNCC's commissioners are a representation of the international law elite. The professional qualifications, experience, and integrity of the commissioners played a key role in their nominations.¹⁰⁰ "Commissioners are chosen for their integrity, experience and expertise in such areas as law, accounting, loss adjustment, assessment of environmental damage, and engineering. They are international jurists and other professionals with an established international reputation."¹⁰¹ The commissioners' superior characteristics parallel those of the international arbitration community. "Only a very select and elite group of individuals is able to serve as international arbitrators. They are purportedly selected for their 'virtue'—judgment, neutrality [and] expertise."¹⁰²

In addition to the panel structure noted above and the commissioners' qualifications, the arbitral model again arises in the commissioners' impartiality requirements. When a commissioner is nominated, he must disclose any relationships which would give rise to justifiable doubts about his impartiality or independence.¹⁰³ Once appointed, commissioners have a duty to disclose any new circum-

97. Report 22559, *supra* note 81, at 7. In addition, the commissioners apply other relevant rules of law as set out in Article 31 of the Provisional Rules for Claims Procedure: "In considering the claims, Commissioners will apply Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any pertinent decisions of the Governing Council. In addition, where necessary, Commissioners shall apply other relevant rules of international law." Provisional Rules, *supra* note 84, at art. 31.

98. Report 22559, *supra* note 81, at 7.

99. *Claims Processing*, *supra* note 96.

100. Report 22559, *supra* note 81, at 3.

101. *The Commissioners*, *supra* note 85.

102. YVES DEZALAY & BRYANT G. GARTH, *DEALING IN VIRTUE* 8 (1996).

103. Provisional Rules, *supra* note 84, at art. 22(1).

stances that might affect the impartial nature of their judgments.¹⁰⁴ Commissioners cannot have financial interests in any of the claims submitted to them, and they cannot have or be associated with financial interests in corporations whose claims have been submitted to them.¹⁰⁵ Additionally, during a commissioner's service, and for two years following the termination of that service, a commissioner cannot represent or advise any party or claimant in preparing or presenting their claims to the Commission.¹⁰⁶ Finally, every commissioner must deliver a signed declaration to the Executive Secretary that reads, "I solemnly declare that I will perform my duties and exercise my position as Commissioner honourably, faithfully, independently, impartially and conscientiously."¹⁰⁷

The high-quality work which issued from the Commission is partially a result of this faithful neutrality.

Taking a broad overview of the jurisprudence of the panels of commissioners, it can be seen that the commissioners are not only exemplary in their fairness and impartiality – as one would expect, given the level of professionalism and scholarship shared by most commissioners – but that their work is a significant contribution to the clarification and development of various rules of international law on claims settlement.¹⁰⁸

Not every aspect of the UNCC is held in such high regard though.

Criticism abounds, and it begins with the Commission's very foundation. "Since its inception, the legitimacy of the United Nations Compensation Commission (UNCC) has been controversial, particularly the Security Council's competence to establish it."¹⁰⁹ Despite Iraq's formal acceptance of Security Council Resolution 687, to all intents and purposes, it was imposed.¹¹⁰ One former judge of the Iran-U.S. Tribunal describes the one-sided nature of the Commission's establishment:

The UNCC [was] . . . unilaterally established by the United Nations Security Council specifically to deal with a Member State that had just lost a war prosecuted by a Coalition of other Member States under authority of a Security Council Resolution. . . . Iraq has had

104. *Id.* at art. 22(2).

105. *Id.* at art. 21(1).

106. *Id.* at art. 21(2).

107. *Id.* at art. 27.

108. Gattini, *supra* note 75, at 178.

109. *Id.* at 161 (italics omitted)

110. Brower, *supra* note 32, at 16.

somewhere between little and no voice in the affairs of the UNCC.¹¹¹

Iraq's lack of participation in the UNCC stands in stark contrast to Iran's involvement in the establishment of the Iran-U.S. Claims Tribunal. Iran had a co-equal role with the United States in every aspect of the Tribunal's operations on a continuous basis.¹¹² The Tribunal therefore reflects the sovereign equality of the two parties who established it, as opposed to the UNCC which was operated almost entirely without input from the state most closely affected by it.¹¹³

The lack of political will from Iraq had serious consequences on the Commission's initial effectiveness and success. Here again, an important comparison can be drawn between the Commission and the Iran-U.S. Tribunal, particularly in the cooperation of Iran and Iraq in financing each of the compensation funds. The fund of the Tribunal was financed in part out of the Iranian financial assets frozen in foreign countries, and overall, Iran was cooperative in making this happen.¹¹⁴ "The Iran-U.S. Claims Tribunal arguably exists because Iran calculated that the political costs of not cooperating were far outweighed by the benefits of unfreezing Iranian assets and terminating U.S. court litigation."¹¹⁵ In the Commission however, Security Council Resolution 705 (1991) stated that the UNCC's compensation fund was to be financed with a percentage of the revenues from Iraq's oil exports.¹¹⁶ "[T]he coercive model of placing the Iraqi oil industry under UN receivership and skimming off 30 percent of the oil revenues was wholly ineffective for many years because Saddam Hussein simply refused to pump oil."¹¹⁷

Because Iraq did not agree to have its oil exports controlled by the United Nations, the system did not work initially.¹¹⁸ "This shows that political will is essential to the successful establishment of new judicial institutions."¹¹⁹ Additionally, the reality of the lack of benefits in this situation for Iraq cannot be overlooked. "[T]hose tribunals established under a rationalist theory have been among the most effec-

111. *Id.*

112. *Id.*

113. *Id.*

114. Guillaume, *supra* note 69, at 859.

115. Alford, *supra* note 4, at 163.

116. S.C. Res. 705, U.N. SCOR, 3004th mtg., at para. 2, U.N. Doc. S/RES/705 (1991), *available at* <http://www2.unog.ch/uncc/resolutio/res0705.pdf> (last visited Dec. 12, 2004).

117. Alford, *supra* note 4, at 164.

118. Guillaume, *supra* note 69, at 859.

119. *Id.*

tive. Iran is still participating in the Iran-U.S. Claims Tribunal, in part because it is a claimant in a multibillion dollar military dispute with the United States.”¹²⁰ With nothing to gain, it is hardly surprising that Iraq was much less cooperative in participating in a mechanism that would take away thirty percent of its oil proceeds to pay off those with claims against it.

As further proof of the commissioners’ professionalism and equal-handedness, they developed several responses to compensate for Iraq’s lack of standing in the Commission. First, they scrutinized the claims against Iraq very closely.¹²¹ “This is a natural consequence of the fact that the defendant is absent and therefore has to no one to defend its interests other than the commissioners themselves, who inevitably will take on the task to a degree.”¹²² Any natural skepticism that the commissioners might have had in a particular claim was going to be slightly amplified simply because the commissioners had to compensate for the absent voice of defense counsel.

Other procedural aspects of the Commission’s work helped to guard against any due process violations stemming from Iraq’s unequal role. Article 16 of the UNCC’s Provisional Rules requires periodic reports to be issued to the Governing Council concerning the claims received by the Executive Secretary.¹²³ In addition to information about the parties who submitted the claims, the categories of the claims, the number of claimants, and the amount of requested compensation, the reports may also contain “significant legal and factual issues raised by the claims.”¹²⁴ These reports must then be circulated to Iraq¹²⁵ who has either 30 or 90 days, depending on the type of claim, in which to present “additional information and views concerning the report to the Executive Secretary for transmission to panels of Commissioners.”¹²⁶ These submissions are Iraq’s only institutionalized pathway to take cognizance of the claims submitted and to cooperate with the panels of commissioners.¹²⁷

The individual panels then have discretion as to how involved Iraq will be in the processing of any given group of claims. Article

120. Alford, *supra* note 4, at 164.

121. Brower, *supra* note 32, at 22.

122. *Id.*

123. Provisional Rules, *supra* note 84, at art. 16(1).

124. *Id.*

125. *Id.* at art. 16(2).

126. *Id.* at art. 16(3).

127. Gattini, *supra* note 75, at 168.

35(3) of the Provisional Rules requires that claims by corporations, governments, international organizations and other entities “be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss.”¹²⁸ Panels can then exercise their rights under Article 36 of the Provisional Rules to request additional evidence in unusually large or complex cases.¹²⁹

It is thanks to these procedural devices that the panels of commissioners can establish a solid link with the Iraqi Government. So far, all panels entrusted with the settlement of unusually large or complex cases have availed themselves of the opportunity of asking Iraq to express its views in written form, and have taken those views into account even when they arrived late.¹³⁰

Additionally, panels have even granted Iraqi requests for oral proceedings in which Iraq could present testimony.¹³¹

A final criticism concerns the fact that the Governing Council is simply the Security Council’s “alter ego.”¹³² Despite the accusation that this set-up allows the Security Council to act “as law-maker, prosecutor and judge” all at the same time, this view is untenable.¹³³ “[T]he UNCC decides as a rule by majority voting without the possibility of a veto, and . . . only decisions relating to questions of measures to ensure Iraqi payments into the Fund are taken by consensus”¹³⁴

While it is clear that the Commission’s main weakness is Iraq’s lack of involvement, this one-sided nature of the Commission contributes directly to its greatest strengths. Because the UNCC was created unilaterally, as opposed to the dual involvement of the United States and Iran in the Tribunal, “substantial justice can be done and done with comparative swiftness at the Commission as regards the multitude of individual claimants.”¹³⁵ The lack of government influence in the UNCC also means that business and governmental claimants are less well off than they were at the Tribunal,

128. Provisional Rules, *supra* note 84, at art. 35(3).

129. Gattini, *supra* note 75, at 169.

130. *Id.*

131. *Id.*

132. *Id.* at 166.

133. *Id.*

134. *Id.*

135. Brower, *supra* note 32, at 27.

which contributes to the strong position of individual claimants at the Commission.¹³⁶

Also, the “small town syndrome,”¹³⁷ which occurred at the Tribunal, was absent at the Commission.

This entire phenomenon does not arise, however, at least not in the same degree, where people are working together on one assignment alone and thereafter will be disbanded. Thus the lack of a standing body of decisional personnel at the UNCC, added to Iraq’s non-participation in its proceedings and its consequent inability to project political events into them, means that decisions consistently can be made in the freest possible atmosphere.¹³⁸

Because panels of commissioners are only appointed for limited periods of time to handle one group or category of claims, the Commission has a stronger sense of impartiality than the Tribunal.

As a whole, the Commission can be judged as a success.¹³⁹ Despite the initial problems in payment, in December 1996, the “oil-for-food” scheme set out in Security Council Resolution 986 (1995), which allowed the Commission to receive thirty percent of the proceeds of Iraq’s oil sales, was finally launched.¹⁴⁰ This allowed the Commission to continue its operations and to finally make regular compensation payments to successful claimants.¹⁴¹ By December 2004, out of over 2.6 million claims filed with the Commission, all but 25,000 had been resolved.¹⁴² Over \$18.8 billion was paid out in compensation to victims of Iraq’s invasion and occupation of Kuwait.¹⁴³

The commissioners also deserve credit for rising to the challenge to decide some incredibly difficult issues that came up at the Commission. For example, the panels had to make decisions concerning the assessment of damages for mental pain and anguish.¹⁴⁴ “The commissioners sought assistance where appropriate from a group of experts in psychiatry, psychology, medicine and war medicine, but in the end

136. *Id.*

137. *See supra* notes 62-63 and accompanying text.

138. Brower, *supra* note 32, at 19.

139. *Id.* at 27.

140. *Introduction, supra* note 72.

141. *Id.*

142. The UNCC at a Glance, at <http://www2.unog.ch/uncc/ata glance.htm> (last visited Mar. 14, 2005).

143. *Id.*

144. Gattini, *supra* note 75, at 178.

it was the commissioners who made the often very difficult decisions on causality.”¹⁴⁵

Even with all the criticisms, the UNCC and its commissioners deserve high praise.

Although some of its procedural and substantial aspects might be open to criticism, the work hitherto accomplished by the various UNCC panels shows a very high standard of legal skill and fairness, and has contributed significantly to the clarification and development of various international law rules on claims settlement.¹⁴⁶

The high-quality work of the Commission is a direct effect of the superior characteristics of the commissioners, just as the Iran-U.S. Tribunal owes much of its success to its judges. As of March 2005, fifty-nine commissioners had been appointed, representing forty different nationalities.¹⁴⁷ It is thanks to these individuals that the UNCC contributed in such a sophisticated and professional manner to the development of international law.

IV. CONCLUSIONS

The Iran-U.S. Tribunal and the UNCC are both models of the successful adjudication of disputes involving non-state actors in international law forums. Additionally, they have both borrowed extensively from the arbitral model, which has contributed some of their strongest features. Because there is no reason to doubt the continuation of the establishment of ad hoc tribunals to deal with forthcoming international disputes, these future judicial bodies would benefit from adopting some of these proven successful characteristics.

Though these international claims tribunals are unique in their structures, the combination of elements drawn from the arbitral and judicial models has proved to be an effective framework.

[M]odern Mass Claims Processes have been a valuable way to defuse diplomatic crises, a useful adjunct to concluding peace treaties, as well as a means of providing compensation for historic wrongs. They offer us the challenging opportunity to consider whether some of the innovations they have pioneered would be useful in making resolution of single cases in international commercial arbitration quicker and more efficient.¹⁴⁸

145. *Id.*

146. *Id.* at 161 (italics omitted).

147. *The Commissioners*, *supra* note 85.

148. Holtzmann, *supra* note 27, at 74.

The Iran-U.S. Tribunal's strongest attribute is that its effective involvement of both state parties legitimized both the overall process and the results coming from the Tribunal. Each party's contribution was an illustration of political will in the dispute resolution process. This was decidedly absent in the UNCC where Iraq had almost no role whatsoever. If future judicial forums can involve the parties in the set-up and operations, there is a greater chance of legitimization.

On the other hand, the UNCC was remarkably effective in creating a free atmosphere of true impartiality by choosing a different group of three commissioners for every group of claims. The "small town syndrome," which was problematic at the Iran-U.S. Tribunal, did not occur at the UNCC. Future forums would benefit from adopting a method to avoid any obstacles to impartiality.

Finally, it is remarkable that these institutions each used aspects of the arbitral model. The establishment of panels to decide claims and the choice of select individuals as judicial decision makers, two of arbitration's most characteristic features, appear in both contexts. By using arbitral elements, "the undoubted value of honest and neutral decisions that international arbitration can provide may be brought effectively to bear on . . . important questions."¹⁴⁹ Integrating arbitral features into a judicial body adds an immediately recognizable dimension of neutrality.

One hundred years after the establishment of the Permanent Court of Arbitration, international courts, tribunals, and commissions have become an integral means for the peaceful settlement of international disputes.¹⁵⁰ Though these judicial institutions vary widely in their mandates, structures, and effectiveness, future international dispute settlement mechanisms would benefit from incorporating their proven successful characteristics.

149. Hulbert, *supra* note 44, at 505–06.

150. Alford, *supra* note 4, at 165.